



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS-SC-17-0066; SC17-929-3 PR]

Cranberries Grown in States of Massachusetts, et al.;

Establishment of Handler Diversion and Reporting

Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of handler diversion and reporting requirements as recommended by the Cranberry Marketing Committee (Committee). This proposal would establish the procedures handlers would use to divert fruit through disposal or into noncompetitive outlets. The reporting requirements would support the diversion procedures by providing the necessary documentation to help ensure compliance when a volume regulation is established. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) of a new information collection.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and

Agreement Division, Specialty Crops Program, AMS, USDA;
Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail:
Doris.Jamieson@ams.usda.gov or
Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule, pursuant to 5 U.S.C. 553, proposes an amendment to regulations used to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Part 929 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of growers

and handlers of cranberries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that OMB exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a

hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal would establish handler diversion and reporting requirements under the Order. This proposal would establish procedures handlers would use to divert fruit through disposal or into noncompetitive outlets. The reporting requirements would support the diversion procedures by providing the necessary documentation to help ensure compliance when a volume regulation is established. This proposed rule was recommended by the Committee at its August 31, 2017, September 15, 2017, and October 13, 2017, meetings.

The Order provides for the use of volume regulation to stabilize prices and improve grower returns during periods of oversupply. Section 929.51(a)(2) specifies that a handler withholding program must be recommended by the Committee no later than August 31 and that such recommendation shall include the free and restricted percentages for the crop year. On August 31, 2017, the

Committee met and recommended free and restricted percentages of 85 percent free and 15 percent restricted. Handler diversion is one method that handlers can utilize to meet restricted percentage requirements.

Section 929.54 provides, in part, that whenever the Secretary of Agriculture (Secretary) has fixed the free and restricted percentages for any fiscal period, each handler shall withhold from handling a portion of the cranberries acquired during such period. This section also provides the authority for the Committee to establish, with the approval of the Secretary, rules and regulations necessary to administer this section. Section 929.56 provides special provisions relating to withheld (restricted) cranberries, and § 929.57 provides authority for the Committee to establish, with the approval of the Secretary, outlets for withheld cranberries which are noncompetitive with outlets for unrestricted (free percentage) cranberries.

Section 929.62 provides, in part, authority to require handlers to submit reports of cranberries acquired, held in inventory, quantity handled, total cranberries withheld from handling, the portion of such withheld cranberries on hand, and the quantity and manner of disposition of any such withheld cranberries diverted. Section 929.62(f)

further provides authority for the Committee, with the approval of the Secretary, to collect other reports and information from handlers needed to perform its duties.

This proposal would use these authorities to establish new §§ 929.157 and 929.162. Section 929.157 would establish the procedures to be used for handler diversion when free and restricted percentages are instituted. Section 929.162 would require handlers of cranberries, during years when free and restricted percentages are applied, to report to the Committee diversion plans and year-end reports, information on cranberries diverted and cranberries shipped to noncompetitive outlets, and other information to verify compliance with the program, using six specific Committee forms. Detailed information on the reporting burden that would be created by these new forms is discussed later in this document.

The Committee recommended establishing free and restricted percentages under a handler withholding volume regulation for the 2017-18 season in response to historically high inventory levels for cranberries. As this is the first time the Committee has used this volume regulation provision under the Order, it recognized the need to establish procedures outlining the diversion requirements for restricted fruit.

Free percentage cranberries can be used to supply any available market, including juice, sweetened dried cranberries, sauce, and frozen cranberries. Restricted percentage cranberries can be diverted through disposal or utilized in markets that are noncompetitive with free cranberries. Possible outlets for restricted cranberries include, in part, for fresh export, except to Canada; charity; research and development projects; and any nonhuman food use. Handlers also have the option to divert processed products in lieu of fresh fruit to meet up to 50 percent of their restricted obligation.

At the 2017 meetings in August, September, and October, the Committee discussed the handler diversion procedures and the associated reporting requirements that would be necessary to help ensure compliance with a free and restricted percentage volume regulation. As a result, the Committee developed and approved six specific forms and related procedures to be used during seasons when free and restricted percentages are established for volume regulation.

Committee members discussed the need for Committee staff to know how handlers plan to meet their restricted percentage obligation and if, at the end of the season, they met their diversion requirement. As a result, the

Committee developed two specific forms to be added to the reporting requirements under the Order.

With the first form, the Handler Withholding Report (CMC-JUN), handlers would provide information on how they plan to meet their restricted percentage obligation. The form would be submitted to the Committee by June 1 during years with established free and restricted percentages and would require the following information: the name and address of the handler, the amount of cranberries to be acquired, the amount of cranberries to be diverted by disposal, the amount of cranberries to be diverted to noncompetitive outlets, and the types of cranberry products to be withheld. The Committee would use this information to estimate the amount of fruit that would be taken off the market, the proposed disposition of the fruit, and as a starting point for tracking handler compliance.

The second form, the Final Handler Withholding Report (CMC-AUG), would be submitted by the end of the crop year. The report would require the same information as the Handler Withholding Report but would provide the Committee with the actual year-end seasonal totals. This form would be due by August 31. The final report would be used to verify that handlers met their restricted percentage obligation.

Handlers would have several diversion options available to meet their restricted percentage obligation. One method of diversion available to handlers would be the disposal of fresh cranberries or cranberry products. In its discussions, Committee members expressed concern regarding verifying the accuracy of the amount of fruit or processed product diverted using this method. The Committee recommended that all disposals should take place under the supervision of a non-industry-related third party who would review the handler's disposal documentation, witness the disposal whenever possible, and certify as to the completion of the disposal process. The Committee initially agreed to hire two inspectors to supervise and verify handler compliance. However, due to the size of the production area, the Committee hired four inspectors, one from each of the primary growing regions, who would perform these tasks. The inspection and verification costs would be paid by the handler.

To facilitate this process, the Committee recommended establishing another form. This form, the Handler Disposal Certification (CMC-DISP), would be the primary form used to initiate, track, and certify this method of diversion during years in which a free and restricted percentage volume regulation has been established. The form would be

used to notify the Committee of the handler's intent to dispose of cranberries or cranberry products. Information required on the form would include the handler's name and address; the amount of fruit to be diverted; the type of cranberry product to be diverted; the amount of processed fruit diverted, if any; and the lot identification information.

Upon receipt of the form, the Committee office would notify the inspector in the handler's growing region. The inspector would contact the handler to schedule a date for the disposal to take place, usually within a week of receipt of the notification. The inspector would meet with the handler on that date to verify the documentation provided and, when possible, witness the disposal.

The Committee recognized that, due to scheduling conflicts, the inspector may not be available to visually witness each disposal of restricted cranberries. Therefore, the Committee agreed that, should the inspector not be available to witness the diversion within seven days, the handler may proceed with the disposal. The inspector would then verify and complete the certification upon the inspector's next visit to the handler's facility. If the cranberries or cranberry product were disposed of at a landfill, through composting, incineration, at a

wastewater treatment facility, or any other site, the inspector may request receipts, visual proof, or any other additional information needed to support the disposal as reported on the form. Once the verification process is completed, the inspector would sign the certification section of the form, and return it to the Committee.

Another method of diversion available would be to divert cranberries or cranberry products to noncompetitive outlets. Section 929.57 specifies that cranberries withheld from handling may be disposed of only through diversion to such outlets as the Committee, with the approval of the Secretary, finds are noncompetitive to outlets for unrestricted (free percentage) cranberries. The Committee discussed various outlets and recommended the following: foreign countries, except Canada; charitable institutions; any nonhuman food use; and research and development projects approved by the Committee dealing with the development of foreign and domestic markets, including but not limited to dehydration, radiation, freeze drying, or freezing of cranberries. The Committee further recommended that cranberries may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process when being

diverted to foreign countries. The specific outlets are being considered under a separate rulemaking action.

AMS submitted and received OMB's approval on the five initial forms. Handlers would complete the forms and submit them to the Committee for purposes of tracking compliance with the proposed handler withholding requirement. OMB approved the forms on October 16, 2017, and assigned them OMB No. 0581-0304. Upon full completion of the forms-approval process, AMS will seek to merge the five forms into the OMB-approved 0581-0189 Fruit Crops containing other forms related to the Federal marketing order for cranberries.

Two specific reporting requirements relating to the diversion of fruit to noncompetitive outlets would be added to part 929: a Handler Application for Outlets for Withheld Fruit (CMC-OUT) and a Third-Party Confirmation of Receipt of Withheld Fruit (CMC-CONF). Should a handler elect to divert cranberries or cranberry products to noncompetitive outlets, the handler must first request Committee approval of the outlet or research project using the Handler Application for Outlets for Withheld Fruit prior to each disposal activity of this type. Information requested on the form would include, among other things, the handler's name and address, information identifying the

noncompetitive outlet, the amount and type of cranberry products to be diverted, and how the cranberries would be utilized. The Committee would review the information and approve or disapprove the diversion request.

If the request is approved and the product is delivered, the receiving outlet would need to acknowledge receipt of the product by completing the Third-Party Confirmation of Receipt of Withheld Fruit form, and the handler would then return the completed form to the Committee.

The two above-described reporting requirements would help track the disposition of withheld cranberries in noncompetitive outlets and would facilitate the compliance process under the recommended handler withholding.

The last form approved by the Committee would provide handlers a method for appealing any decision made by the Committee relating to the diversion process. Should a handler disagree with a Committee decision, such as denying the request for approval of a noncompetitive outlet, or a determination that diversion could not be verified, the handler could appeal the decision by submitting a Handler Withholding Appeal form (CMC-APPL). The handler making the appeal would be required to submit the form within 30 days of receiving the determination from the Committee. This

form would include information about why the handler is making the appeal and would provide additional information to support the appeal. The appeal request would be reviewed by an Appeals Subcommittee (Subcommittee) for reconsideration. The Subcommittee would consist of two independent growers, two members from the major cooperative, and one public member. The handler would be notified of the Subcommittee's determination within 30 days. If the appeal is denied by the Subcommittee, the handler would have the option of appealing the decision to the Secretary within 15 days after the notification of the Subcommittee's findings.

In order to enable the Committee to inform the industry of the information needed for handlers to manage their inventories in a way that complies with the industry-supported handler withholding program, the five initial forms were previously submitted to OMB for approval. These five forms (CMC-JUN, CMC-DISP, CMC-OUT, CMC-CONF and CMC-APPL) were approved by OMB on October 16, 2017, for use for a six-month period, beginning the date of approval. This proposed rule is necessary for the industry to use the forms beyond the six-month period.

Establishing these handler diversion and reporting requirements would facilitate the implementation of, and

ensure compliance with, free and restricted percentages when recommended by the Committee.

The Committee also recommended establishing free and restricted percentages under handler withholding for the 2017-18 crop year, as well as specifying the noncompetitive outlets available for diversion. These recommendations are being considered under a separate action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,100 cranberry growers in the regulated area and approximately 65 cranberry handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration

(SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average grower price for cranberries during the 2016-17 crop year was \$23.50 per barrel, and total sales were around 9.5 million barrels. The value for cranberries that crop year totaled \$223,250,000 (\$23.50 per barrel multiplied by 9.5 million barrels). Taking the total value of production for cranberries and dividing it by the total number of cranberry growers (1,100) provides an average return per grower of \$202,955. Based on USDA's Market News reports, the average free on board (f.o.b.) price for cranberries was around \$30.00 per barrel. Multiplying the f.o.b. price by total utilization of 9.5 million barrels results in an estimated handler-level cranberry value of \$285 million. Dividing this figure by the number of handlers (65) yields an estimated average annual handler receipt of \$4.3 million, which is below the SBA threshold for small agricultural service firms. Therefore, the majority of growers and handlers of cranberries may be classified as small entities.

This proposed rule would establish handler diversion and reporting requirements under the Order. This proposed rule would establish procedures handlers would use to divert fruit through disposal or into noncompetitive outlets. The reporting requirements would support the diversion procedures by providing the necessary documentation to help ensure compliance when a volume regulation is established. This rule would establish new §§ 929.157 and 929.162. The authority for this action is provided for in §§ 929.54, 929.56, 929.57, and 929.62.

These actions could result in some additional costs to the industry. Specifically, handlers would incur some additional costs as a result of inspector verification and certification of the diversion process. In addition, requiring reports of cranberries acquired, handled, and withheld would impose an increase in the reporting burden on all cranberry handlers. However, the benefits are expected to outweigh the costs and increase in reporting burden. The provisions considered in this action would help facilitate the implementation of any recommended handler withholding volume regulation and help ensure compliance with the recommended regulation. Consequently, these changes would help provide important guidance during

times when market conditions would support the need for establishing volume regulation.

The impact of this rule would be beneficial to growers and handlers. Establishing diversion procedures would benefit the entire industry by ensuring handler diversion is conducted consistently and accurately by all handlers, which would also help ensure compliance with the handler withholding program. Authorizing various diversion outlets means handlers would not be required to divert cranberries only through destruction. Instead, fruit could be utilized in noncompetitive outlets, such as for charitable purposes. The benefits of this rule are expected to be equally available to all cranberry growers and handlers, regardless of their size, and are greater than any associated costs.

The Committee discussed other alternatives to this proposal, including using different methods of ensuring accurate diversion of restricted fruit. One method considered was allowing handlers to self-report their diversion of restricted fruit without a formal verification process. However, the Committee deemed this insufficient verification to ensure compliance with the program. Members were concerned that fruit could be re-routed to a different handling facility for processing, and without established verification procedures, the industry would not

have confidence that restricted fruit was being properly diverted. The Committee also considered the value and importance of each of the forms and whether all were required. However, the Committee agreed each of the recommended forms would provide important information for the industry and for administering the Order. Therefore, these alternatives were rejected.

This proposal would establish six new reporting requirements and six new Committee forms. Therefore, this proposed rule would impose an increase in the reporting burden for all handlers, which is discussed in the Paperwork Reduction Act section of this document.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meetings were widely publicized throughout the cranberry industry, and all

interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Additionally, the Committee's meetings held August 31, September 15, and October 13, 2017, were public meetings, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces AMS's intent to request approval from OMB for a new information

collection under OMB No. 0581-NEW. The five currently approved forms in 0581-0304 and one additional form will be merged with the forms currently approved under OMB No. 0581-0189, Fruit Crops.

Title: Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Marketing Order No. 929.

OMB Number: 0581-NEW.

Type of Request: New collection.

Abstract: The information requirements in this request are essential to carry out the intent of the Act to provide the respondents the type of service they request, and to administer the Cranberry Marketing Order Program. USDA is responsible for overseeing the Order regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The Order is effective under the Act.

On September 15, 2017, the Committee unanimously recommended that cranberry handlers subject to the Order provide the Committee with a report indicating the anticipated total quantity of cranberries acquired by the

handler, the amount withheld from handling, and the disposition of such withheld cranberries during the crop year. This form, titled "Handler Withholding Report (CMC-JUN)," would be submitted directly to the Committee by handlers by June 1 in crop years when a handler withholding regulation has been established. This report would give the Committee background data on how each handler plans to meet the requirements of the handler withholding volume regulation.

The Committee also recommended that cranberry handlers submit a final year-end report indicating the actual total quantity of cranberries acquired by the handler, the amount withheld from handling, and the disposition of such withheld cranberries during the crop year. This form, titled "Final Handler Withholding Report (CMC-AUG)," would be submitted directly to the Committee by handlers by August 31. This report would give the Committee actual data on how each handler met the requirements of the handler withholding volume regulation.

The Committee also recommended that handlers subject to the Order submit a report certifying whenever a disposal of withheld cranberries is to be made. This report would contain information regarding the volume, the form of disposed cranberries, and information on the container

type. This form, titled "Handler Disposal Certification (CMC-DISP)," would be submitted directly to the Committee by handlers preceding each disposal activity. This information collection would provide the Committee with data regarding the amount of cranberries diverted and the information needed to help track handler compliance with the recommended handler withholding requirements.

The Committee also recommended that handlers provide the Committee with a record of withheld cranberries disposed of in non-commercial outlets. This form, titled "Handler Application for Outlets for Withheld Fruit (CMC-OUT)," would be submitted directly to the Committee by handlers to provide information regarding the type, form, and volume of cranberries disposed of in noncompetitive outlets. Handlers would submit this form prior to each disposal activity of this type to provide the Committee with the opportunity to review and approve the requested outlet. This information collection would provide the Committee with information on the noncompetitive outlets used to meet the requirements for withheld cranberries and would be necessary for the Committee to track compliance with an established handler withholding requirement.

The Committee also recommended that handlers submit a report confirming the third-party receipt of withheld

fruit. This form, titled "Third-Party Confirmation of Receipt of Withheld Fruit (CMC-CONF)," would include certification by outlets receiving withheld cranberries for use in a noncompetitive outlet. This form would need to be submitted after each shipment of withheld fruit received by noncompetitive outlets, such as charities. This report contains information on the type, form, and volume of withheld fruit received. This reporting requirement would help track the disposition of withheld cranberries and facilitate compliance with the recommended handler withholding requirements.

The Committee also recommended establishing a form for handlers to use to appeal any denial of a request made for disposing of cranberries in a noncompetitive outlet. This form, titled "Handler Withholding Appeal (CMC-APPL)," would need to be submitted by the handler making the appeal within 30 days of the denial. This form would include information about why the handler is making the appeal and would provide additional information to support the appeal.

The Order authorizes the Committee to collect certain information as required. The information collected would only be used by authorized representatives of the USDA, including the AMS Specialty Crops Program regional and headquarters staff, and authorized employees of the

Committee. All proprietary information would be kept confidential in accordance with the Act and the Order.

The Committee developed these forms to effectively carry out a handler withholding volume regulation for the 2017-18 crop year and for future years when a handler withholding regulation has been established. The purpose of these forms would be to ensure compliance with the recommended handler withholding requirement.

Upon OMB approval of the new forms and the information collection package, AMS will request OMB approval to merge the new forms and this information collection in the currently approved information collection OMB control number 0581-0189, Fruit Crops.

The proposed request for new information collection under the Order is as follows:

Handler Withholding Report (CMC-JUN)

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.08 hours per response.

Respondents: Handlers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.8

hours.

Handler Disposal Certification (CMC-DISP)

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.17 hours per response.

Respondents: Handlers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 20.4

hours.

Handler Application for Outlets for Withheld Fruit (CMC-OUT)

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.08 hours per response.

Respondents: Handlers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 9.6

hours.

Third-Party Confirmation of Receipt of Withheld Fruit (CMC-CONF)

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.05 hours per response.

Respondents: Handlers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 6 hours.

Handler Withholding Appeal (CMC-APPL)

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.08 hours per response.

Respondents: Handlers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 0.8

hours.

Final Handler Withholding Report (CMC-AUG)

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.08 hours per response.

Respondents: Handlers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.8

hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Marketing Order for Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and should be sent to the USDA in care of the Docket Clerk at the previously mentioned address or at <http://www.regulations.gov>.

All responses to this notice will be summarized and included in the request for OMB approval. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the address of the Docket Clerk or at <http://www.regulations.gov>.

If this proposed rule is finalized, this information collection will be merged with the forms currently approved under OMB No. 0581-0189, Fruit Crops.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601-674.

[Subpart Redesignated as Subpart A]

2. Redesignate "Subpart-Order Regulating Handling" as "Subpart A-Order Regulating Handling".

[Subpart Redesignated as Subpart B and Amended]

3. Redesignate "Subpart-Administrative Rules and Regulations" as subpart B and revise the heading to read as follows:

Subpart B—Administrative Requirements

4. Add § 929.157 to read as follows:

§ 929.157 Handler diversion.

(a) Methods of diversion. Handlers may divert cranberries by disposing of cranberries or cranberry products. Diversion by disposal may take place prior to placing the cranberries into the processing line or after processing. Handlers may also divert cranberries or

cranberry products to approved, noncompetitive outlets for withheld fruit. Whole berries or processed products diverted must come from the current crop year. Any information collected of a confidential and/or proprietary nature would be held in confidence pursuant to § 929.65.

(1) Diversion through disposal. This type of diversion is to be carried out under the supervision of the Committee, and the cost of such supervision is to be paid by the handler. Handlers shall notify the Committee of their intent to dispose of cranberries or cranberry products using Form CMC-DISP as specified in § 929.162(c). Following notification, a Committee inspector will meet with the handler to verify the documentation provided and, when possible, witness the destruction. The Committee inspector may request receipts, visual proof, or any other information needed to support the disposal as reported. Once the verification process has been completed, the Committee inspector will sign the certification section of Form CMC-DISP and return it to the Committee.

(2) Diversion through noncompetitive outlets. To divert cranberries or cranberry products to a noncompetitive outlet, handlers must apply to the Committee using Form CMC-OUT as specified in § 929.162(d) prior to each disposal activity of this type. The Committee will

review the information and approve or disapprove the diversion request. Once the cranberries or cranberry products are delivered to the approved noncompetitive outlets, the Committee must receive satisfactory documentation of the transaction using Form CMC-CONF as specified in § 929.162(e).

(b) Committee notification and handler plan. Any handler intending to divert cranberries or cranberry products pursuant to § 929.54 must notify the Committee of such intent and provide a plan by June 1 that shows how the handler intends to meet the restricted percentage obligation. The handler shall submit this plan using Form CMC-JUNE as specified in the reporting requirements under § 929.162(a). The handler will have until August 31 to fulfill the plan, by which time the handler shall submit a final report detailing how the restricted percentage obligation was met using Form CMC-AUG as specified in § 929.162(b).

(c) Request for review. (1) If a handler is dissatisfied with a determination made by the Committee which affects such handler, the handler may submit to the Committee within 30 days after receipt of the Committee's determination, a request for a review by an appeals subcommittee composed of two independent growers and two

cooperative representatives, as well as a public member. The appeals subcommittee shall be appointed by the Committee chairperson. The handler may forward with the request any pertinent materials for consideration of the appeal.

(2) The subcommittee shall review the information submitted by the handler and render a decision within 30 days of receipt of such appeal. The subcommittee shall notify the handler of its decision, accompanied by the reasons for its conclusions and findings.

(3) The handler may further appeal to the Secretary, within 15 days after notification of the subcommittee's findings, if such handler is not satisfied with the appeals subcommittee's decision. The Committee shall forward a file to the Secretary with all pertinent information related to the handler's appeal. The Secretary shall inform the handler and all interested parties of the Secretary's decision. All decisions by the Secretary are final.

5. Add § 929.162 to read as follows:

§ 929.162 Handler diversion reports.

(a) Handler withholding report. Handlers shall submit to the Committee, by June 1, a handler withholding report.

The report shall be submitted using Form CMC-JUN and contain the following information:

- (1) The name and address of the handler;
- (2) The amount of cranberries acquired;
- (3) The amount of cranberries withheld by disposal;
- (4) The amount of cranberries diverted to noncompetitive outlets;

- (5) The form of cranberry products withheld; and
- (6) The total withholding obligation.

(b) Handler Withholding Final Report. Handlers shall submit to the Committee, by August 31, a final handler withholding report. The final report shall be submitted using Form CMC-AUG and contain the following information:

- (1) The name and address of the handler;
- (2) The seasonal total of cranberries acquired;
- (3) The seasonal total of cranberries withheld by disposal;

- (4) The seasonal total of cranberries diverted to noncompetitive outlets;

- (5) The form of cranberry products withheld during the season; and

- (6) The total withholding obligation.

(c) Handler disposal certification. Handlers shall submit to the Committee Form CMC-DISP for each lot of

cranberries or cranberry products to be diverted through disposal. The form shall contain the following information:

- (1) Name and address of the handler;
- (2) Marketable cranberries in whole fruit or processed cranberries converted to whole fruit equivalent disposed of in this lot;
- (3) Form of cranberries;
- (4) Volume if in processed form;
- (5) Lot details;
- (6) Disposal site and method; and
- (7) Inspector certification of the completion of the disposal.

(d) Handler application for outlets for withheld fruit. Handlers shall submit to the Committee Form CMC-OUT for approval for each lot of cranberries or cranberry products to be diverted to noncompetitive outlets in accordance with § 929.57. The form shall contain the following information:

- (1) Name and address of the handler;
- (2) Project type;
- (3) Product form;

(4) Quantity of cranberries in whole fruit or processed cranberries converted to whole fruit equivalent diverted;

(5) A description of the project and how the cranberries will be used.

(e) Third-party confirmation of receipt of withheld fruit. Handlers shall submit to the Committee Form CMC-CONF for each diversion to a noncompetitive outlet to verify the receipt of the cranberries or cranberry product by the approved outlet. The form shall contain the following information:

(1) Name and address of the handler;

(2) Project type;

(3) Product form;

(4) Quantity of cranberries in whole fruit or processed cranberries converted to whole fruit equivalent utilized; and

(5) Confirmation or documentation of receipt from the receiving outlet.

(f) Handler withholding appeal. Handlers may appeal a determination made by the Committee relating to a handler withholding regulation using the appeals process outlined in § 929.157(c) and Form CMC-APPL, which shall contain the following information:

- (1) Name and address of the handler;
- (2) Reason for appeal; and
- (3) Information in support of appeal.

[Subpart Redesignated as Subpart C]

6. Redesignate "Subpart-Assessment Rate" as "Subpart C-Assessment Rate".

Dated: February 2, 2018

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

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